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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/042,985 | 10/19/2001 | John H. Schneider | ITW-13111 | 5951 |

23566 7590 04/09/2004

OSTRAGER CHONG & FLAHERTY LLP
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NEW YORK, NY 10022-7519

EXAMINER

TRUONG, THANH K

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3721

12

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,985

Applicant(s)

SCHNEIDER ET AL.

Examiner

Thanh K Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-23,33 and 41-57 is/are pending in the application.
- 4a) Of the above claim(s) 12,23,51 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, 13-22, 33, 41-50, 52 and 54-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 11, received on February 4, 2004.
2. In light of the Applicant's clarification on paper no. 11, the 112 (second paragraph) rejection of claims 41-44 and 48 has been withdrawn. As the Applicant pointed out from the disclosure (page 8, lines 26-28) "lines of weakness may be employed in place of slits, provided that such lines of weakness yield easily when the consumer tries to tear the header open". A line of weakness is an alternative embodiment of the slit.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 33, 41-48, 50, 52 and 54-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Strand et al. (6,360,513).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper 20 attached to the mouth and comprising first and second fastener strips; a slider 20a movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips; and a header 11

enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches 24 formed therein, header comprising the line of weakness 12 extending generally laterally across the header in a region lower than an elevation of the first tear notch and a second line of weakness 13 traversing a range of elevations encompassing a first elevation near an elevation of the first tear notch and a second elevation near an elevation of the first line of weakness 12 (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10); and the first elevation is above a top of the slider and the second elevation is below a bottom of the slider (figures 3 and 5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-11, 13-23, 33, 41-50, 52 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513).

As discussed above in paragraph 4 of this office action, Strand discloses the claimed invention, but does not expressly disclose that the second line of weakness 13 is a slit. However, as the Applicant's disclosure clearly pointed out, as discussed in the

paragraph 2 of this office action, the line of weakness can replace the slit. One is the alternative embodiment (an obvious variation in design) of the other. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to replace the line of weakness 13 in Strand by a slit that is defined by a pair of mutually parallel internal edges of equal length and separated by substantially no gap. A slit would provide the user an easy means to tear the header open.

Strand further discloses: the first slit is inclined at an angle in a range of 30 to 90 degrees relative to a line of the zipper 20, and the lower point of the first slit being further away from the closest one of the first and second side edges than is the upper point of the first slit; and the first and second lines of weakness and the first and second slits are overlapping.

Response to Arguments

7. Applicant's arguments in paper no. 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

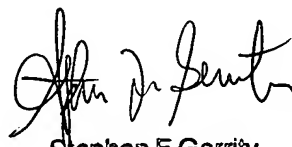
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkk
April 2, 2004.



Stephen F. Gerrity
Primary Examiner